

Amendment No. 1 to SB0855

Gardenhire
Signature of Sponsor

AMEND Senate Bill No. 855

House Bill No. 794*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 55-10-419, is amended by deleting the section and substituting:

(a) As used in this section, unless the context otherwise requires:

(1) "Alternative device" means a transdermal monitoring device, other alternative alcohol or drug monitoring device, or global positioning monitoring device;

(2) "Eligible costs" means the costs paid from the fund that are associated with:

(A) The lease, purchase, installation, removal, and maintenance of a functioning ignition interlock device or with any other cost or fee associated with a functioning ignition interlock device required in accordance with § 40-11-118(d)(1)(B), § 55-10-401, § 55-10-409(b)(2), § 55-10-409(d)(2), § 55-10-417(a)(1), § 55-10-417(k), and other applicable law for a person determined by the court to be indigent; or

(B) The use, monitoring, and maintenance of an alternative device required pursuant to § 40-11-118(d)(2), § 40-11-152, § 55-10-402(d)(2)(A)(iii), § 55-10-402(h)(7), or any other applicable law for a person determined by a court to be indigent;

(3) "Functioning ignition interlock device" has the same meaning as in § 55-10-411(h)(2);

(4) "Fund" means the electronic monitoring indigency fund;

(5) "Indigent" means a person who has been determined by a court to not possess sufficient means to pay for eligible costs applying the factors in subdivision (h)(4);

(6) "Local government" means a county or metropolitan government; and

(7) "Provider" means an ignition interlock provider, as defined in § 55-10-411(h)(3), and a provider of an alternative device.

(b) There is created in the state treasury a fund known as the electronic monitoring indigency fund. The fund is composed of two (2) accounts:

(1) The ignition interlock device account, which must pay for eligible costs for a functioning ignition interlock device that has been ordered by a court in accordance with applicable law; and

(2) The alternative device account, which must pay for eligible costs for an alternative device that has been ordered by a court in accordance with applicable law.

(c) The fund must be administered as follows:

(1) The money in the two (2) accounts may be commingled for investment purposes but must be accounted for separately with separate accounting for each account's principal and income;

(2) The ignition interlock device account must contain state-appropriated monies and may contain a portion of the fees assessed in accordance with this section, and as provided in other applicable law. The ignition interlock device account must be funded in whole or in part from state-appropriated monies;

(3) The alternative device account must contain state-appropriated monies;

(4) Moneys in the fund shall not revert to the general fund of the state, but must remain available to be used as provided for in this section;

(5) Interest accruing on fund deposits and investments must be credited to the fund, must not revert to the general fund, and must be carried forward into each subsequent fiscal year;

(6) Moneys in the fund must be invested by the state treasurer in accordance with § 9-4-603; and

(7) All proceeds collected pursuant to § 55-10-413(a) and § 69-9-219(c)(9) must be transmitted to the state treasurer for deposit in the fund.

(d) The fund must be composed of fees assessed pursuant to §§ 55-10-413(a) and 69-9-219(c)(9), which must be allocated as follows:

(1) Thirty dollars and fifty cents (\$30.50) to the fund for the purpose of paying eligible costs, and all costs and expenses incurred by the department of treasury for the administration of the fund;

(2) Four dollars and fifty cents (\$4.50) to the Tennessee Hospital Association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the Medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts, and expanding healthcare services in underserved areas;

(3) One dollar and twenty-five cents (\$1.25) to the department of mental health and substance abuse services to be placed in the alcohol and drug addiction treatment fund;

(4) One dollar and twenty-five cents (\$1.25) to the department of safety, Tennessee highway safety office, for the sole purpose of funding grant awards to local law enforcement agencies for purposes of obtaining and maintaining equipment and personnel needed in the enforcement of alcohol-related traffic offenses;

(5) One dollar and twenty-five cents (\$1.25) for the department of safety to be used to defray the expenses of administering this part; and

(6) One dollar and twenty-five cents (\$1.25) to the department of finance and administration, office of criminal justice programs, for the sole purpose of funding grant awards to halfway houses whose primary focus is to assist drug and alcohol offenders. In order for a halfway house to qualify for such grant awards it must provide:

(A) No less than sixty (60) residential beds monthly with occupancy at no less than ninety-seven percent (97%) per month, or if a halfway house with nonresidential day reporting services, it shall serve no less than two hundred (200) adults monthly;

(B) Safe and secure treatment facilities, and treatment to include moral recognition therapy, high school equivalency credential course work, anger management therapy, and domestic and family counseling; and

(C) Transportation to and from work and mental health or medical appointments for each of its residents.

(e) Annually, the state treasurer, in consultation with the commissioner of finance and administration, shall conduct an analysis to determine the solvency of the fund. The state treasurer may declare a surplus if there is a balance in excess of the amount necessary to maintain the solvency of the fund and shall report the amount of any surplus to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51. A surplus in the fund must be allocated as follows:

(1) Fifty percent (50%) of such surplus must be transmitted to the department of mental health and substance abuse services and placed in the alcohol and drug addiction treatment fund; and

(2) Fifty percent (50%) of such surplus must be used by the department of safety, Tennessee highway safety office, to provide grants to local law

enforcement agencies for purposes of obtaining and maintaining equipment or personnel needed in the enforcement of alcohol-related traffic offenses.

(f) The state treasurer shall manage and administer the payment of eligible costs for ignition interlock devices. A local government is not required to demonstrate its participation in the fund for the payment of eligible costs from the fund for ignition interlock devices.

(g) Subject to annual appropriations, there is established a grant program to assist local governments with up to fifty percent (50%) of the payment of eligible costs for alternative devices. The department of finance and administration, office of criminal justice programs, shall develop and administer the grant program.

(h)

(1) Notwithstanding another law to the contrary, the eligible costs incurred in order to comply with a court order to use a functioning ignition interlock device or an alternative device must be paid by the person ordered to use the device, unless the court finds such person to be indigent.

(2) If a court determines that a person is indigent, then the court shall order the person to pay a minimum of thirty dollars (\$30.00) per month. The remainder of the costs must be paid from the fund.

(3) Whenever a person ordered to install a device asserts an inability to pay for such device, the court shall conduct a full and complete hearing to determine the person's indigency. All statements made by the person must be by written affidavit of indigency created by the administrative office of the courts and sworn to before the court. If the person intentionally misrepresents, falsifies, or withholds any information in the affidavit of indigency, then the person commits perjury as set out in § 39-16-702.

(4) When making a finding as to indigency under this section, the court shall consider:

(A) The income of the person, regardless of source, including, but not limited to, governmental assistance or pensions;

(B) The person's monthly expenses;

(C) The number of other members of the person's household and any dependents;

(D) The person's employment status and education level;

(E) The person's ownership or equity in real or personal property or other assets;

(F) The person's debts;

(G) The amount of the appearance or appeal bond, whether the person has been able to obtain release by making bond, and, if the person obtained release by making bond, the amount of money paid and the source of the money;

(H) The poverty level income guidelines compiled and published by the United States department of labor; and

(I) Other circumstances presented to the court that the court finds to be relevant to the issue of indigency.

(i) The department of treasury shall administer, process, and pay the claims submitted by ignition interlock providers for an indigent person's eligible costs. Each local government participating in the alternative device account shall administer, process, and pay its own claims submitted by alternative device providers for an indigent person's eligible costs.

(j) Ignition interlock providers shall submit claims and invoices to the state treasurer for reimbursement from the ignition interlock device account for an indigent person with eligible costs, and providers of alternative devices shall submit claims and invoices for reimbursement to the respective local government for reimbursement from the alternative device account for an indigent person with eligible costs. Both types of

claims must be submitted no later than ninety (90) calendar days after the device has been ordered by the court, and must be accompanied by the following:

(1) The court order requiring the device;

(2) The affidavit of indigency, and any other information considered by the court to arrive at a determination of the person's indigency; and

(3) An attestation from the provider for each claim indicating that the charges contained in the claim are true and accurate and do not contain duplicate claims or charges previously submitted for reimbursement.

(k) Once a claim is approved for eligibility, the provider shall submit:

(1) Invoices for payment to either the state treasurer or the local government no later than one hundred eighty (180) calendar days from the date of service;

(2) Amendments to documents previously submitted or new documentation in support of a claim or invoice to either the state treasurer or the local government no later than ninety (90) calendar days after the provider's receipt of the amended or new documentation; and

(3) Any additional information or any additional forms requested by the state treasurer or the local government.

(l) Once the invoice for payment has been approved, a provider must be paid no more than two hundred dollars (\$200) per month for the eligible costs for a device.

(m) The provider shall ensure that the court orders submitted to either the state treasurer or the local government do not contain handwritten changes and are submitted on a uniform court order prescribed by the administrative office of the courts.

(n) If a provider filing a claim or invoice for reimbursement from the fund knowingly makes a false, fictitious, or fraudulent statement or representation, or knowingly submits false, fictitious, or fraudulent documentation or information to the

state treasurer or the local government for reimbursement, then the provider may be liable under the false claims act, compiled in title 4, chapter 18.

(o) If a provider is overpaid from the fund for any reason, then either the state treasurer or the local government may exercise a right of set-off against any amount due to the provider from the fund.

(p) If the state treasurer determines or anticipates that there are or will be insufficient funds to pay for eligible costs from the ignition interlock account, or the local government determines or anticipates that there are or will be insufficient funds to pay for eligible costs, then the state treasurer or the local government may:

(1) Stop accepting, determining eligibility for, or paying claims or invoices submitted by providers for a period of time determined by either the state treasurer or the local government;

(2) Begin accepting or paying claims or invoices submitted by providers on or after the date on which the state treasurer determines that there is a sufficient amount of money in the ignition interlock account or the local government determines there is a sufficient amount of money in the alternative device account;

(3) Notify providers and the administrative office of the courts of the anticipated date that provider claims and invoices will be accepted and paid from the respective accounts in the fund again; and

(4) Establish an order of priority for paying claims and invoices after the period of insolvency.

(q) The state treasurer is authorized to promulgate rules relative to the investment of money in the fund and the administration, processing, and payment of ignition interlock provider claims and invoices. The commissioner of finance and administration is authorized to promulgate rules relative to the grant program.

(r) The state treasurer, in consultation with the department of finance and administration, shall report annually to the general assembly on the activities of the fund for the preceding fiscal year. The first report is due no later than February 1, 2024, and by each February 1 thereafter.

(s) The fund is subject to examination and audit by the comptroller of the treasury.

SECTION 2. This act takes effect October 1, 2023, the public welfare requiring it, and applies to claims for alternative devices that are eligible for payment or pending an eligibility determination on or after October 1, 2023, and to invoices for alternative devices that are pending payment or submitted for payment on or after October 1, 2023.